

## REMARKS AND ARGUMENTS

This Response is considered fully responsive to the Non-Final Office Action mailed December 2, 2008. Claims 1-51 were pending in the application. The Examiner has rejected claims 1-34 and 45-51 and the Examiner has objected to claims 35-44. In this response claim 1 has been amended, no claims have been cancelled, and no claims have been added. Therefore, claims 1-51 remain pending in the application. Reexamination and reconsideration are requested.

### **Double Patenting Rejection**

In the Office Action Claims 1, 4, 5, 26, 30, 31 and 51, are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 4, 7-9, 13 and 16-20 of copending Application No. 10/955,557. The Applicants acknowledge these provisional double patenting rejections, and will address these double patent rejections when either this application or the '557 application is allowed.

### **Claim Rejections – 35 U.S.C. § 101**

Claims 1-25 stand rejected under 35 U.S.C. § 101, because the claimed invention purportedly does not fall within one of the four statutory categories of invention, particularly a statutory “process”. The Examiner further asserts that “a statutory ‘process’ under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing.”

Claim 1 is currently amended to recite a “processing unit” in operations that “determine a first distribution”, “determine a second distribution”, and “edit[] at least one pixel”. The Applicants respectfully assert that the addition of a “processing unit” ties claim 1 to “a particular apparatus” and thus renders claims 1-16 statutory processes under 35 U.S.C. 101. The Applicants therefore respectfully request the Examiner reconsider and withdraw these rejections in light of the Applicant’s amendments.

### **Claim Rejections – 35 U.S.C. § 102**

Claims 1-9, 20-34, and 45-51 stand rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 6,434,269 to Hamburg (“Hamburg”). Regarding claims 1, 26, and

51, the Examiner asserts that Hamburg teaches “[s]ampling pixels in a first region within a tool impression in a digital image to determine a first distribution of a pixel property of the pixels in the first region” and “[s]ampling pixels in a second region within the tool impression[] to determine a second distribution of the pixel property of the pixels in the second region . . . .” The Applicants respectfully disagree.

Hamburg describes a method for erasing pixels in a digital image based upon the correlation of a particular pixel to a “predefined color” (Hamburg, 6/39-48). The predefined color(s) may be an erasure color and/or a keep color. The erasure color and/or keep color can be determined by sampling a current color at the center or other particular area of a tip region on the digital image or it can be otherwise specified by a user (Hamburg 7/32-50). Hamburg *does not* disclose more than one particular area of a tip region defining more than one predefined color.

Further, the method for erasing pixels in a digital image taught by Hamburg applies a color match function to each pixel in the tip region. “The color match function produces as an output a color match value that is indicative of the degree that the color associated with a given pixel matches the erasure color” (Hamburg 6/63-7/3). “Using the color match values, a feature can be erased from the image” (Hamburg 8/26-27). Hamburg *does not* teach editing pixels of the image based on a first distribution of a pixel property of pixels in a first area of the tip region and a second distribution of a pixel property of pixels in a second area of the tip region.

Independent claims 1, 26, and 51 of the present application recite in part “sampling (samples) pixels in a *first region* within a tool impression in a digital image to determine a first distribution of a pixel property . . . sampling (samples) pixels in a *second region* within the tool impression to determine a second distribution of the pixel property . . .” (emphasis added). The tool impression is described in the present application as having “two component regions: a central region 112, and an outer region between the central region 112 and the outer boundary of the tool impression 110” (pg. 7, ln. 4-6; FIG. 1). A user “places the tool impression 400 such that the outer region includes pixels of the object 410 (see region portion 414) and the central region 416 includes pixels of the background 412 but substantively none of the pixels of the object 410 . . .” (pg. 17, ln. 12-15; FIG. 4). While Hamburg discloses multiple predefined colors and multiple areas within a tip region from which the predefined colors may be drawn, the Applicant can find no reference in Hamburg to *multiple* regions (e.g. a first region and a second

region) within the *same* tool impression from which distributions of pixel properties (e.g. first distribution and third distribution) may be drawn.

Independent claims 1, 26, and 51 of the present application also recite in part “a *first distribution* of a pixel property of the pixels in the *first region* . . . [and] a *second distribution* of the pixel property of the pixels in the *second region*. . . (emphasis added). Referring to FIG. 4 of the present application, “[t]he properties of pixels within the central region 416 are sampled to produce a pixel property distribution 418, and the properties of pixels within the outer region are sampled to produce a pixel property distribution 420” (pg. 17, ln. 21-23). In one implementation, the pixel property distribution 418 and pixel property distribution 420 are the first and second distributions as asserted in claims 1, 26, and 51. The vertical axis of the first and second distributions as shown in FIG. 4 represents “the number or fraction of pixels having a pixel property value” (e.g. a color) (pg. 17, ln. 23-25). The horizontal axis represents a “color difference between the color of a pixel at the center of the central region 416 [e.g. a background color] and the color of each other pixel in the central region 416. The background color . . . may be used to establish the origin for the color difference axis . . .” (pg. 18, ln. 19-23; FIG. 4).

While Hamburg discloses a color match function that produces as an output a color match value that is indicative of the degree that the color associated with a *given pixel* matches the erasure color,” (Hamburg 7/67 - 8/3), the Applicant can find no reference in Hamburg to a property distribution that outputs a fraction of *all the pixels* in a region of the tip profile that possesses a specific pixel property value. Further, the Applicant can find no reference in Hamburg to *multiple* color match functions (e.g. a first color match function and a second color match function) applying to *multiple* tip regions (e.g. a first region and a second region) of the tip profile.

In view of the above discussion, Applicants respectfully request reconsideration and withdrawal of the obviousness rejections to independent claims 1, 26, and 51 and dependent claims 2-9, 20-25, 27-34, and 45-50 which respectively depend therefrom.

### **Allowable Subject Matter**

In the Office Action claims 35-44 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In light of the arguments and

amendments made herein, Applicants believe that claims 35-44 are allowable in their current form. Thus, Applicants respectfully request that claims 35-44 be allowed.

**Conclusion**

The Applicants have addressed each of the issues raised in the Office Action through argument, amendment, and terminal disclaimer. Applicant believes claims 1-51 in the application are thus presently allowable, requests reconsideration of all previously rejected claims, and requests that a notice of allowability be issued in due course.

Respectfully submitted this 2<sup>nd</sup> day of March 2009.

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